

Editor's note: Appealed -- dismissed with prejudice, Civ. No. A-169-73 (D. Alaska Jan. 13, 1976)

CORTELLA COAL CORPORATION ET AL.
ALASKA MINERAL EXPLORATION CO., INC.

IBLA 73-416

Decided September 26, 1973

Appeals from Alaska State Office, Bureau of Land Management, decision of April 25, 1973, rejecting coal prospecting permit applications AA-2933, 2934, 3432, 3788-9, 3828, 3832, 3914, 4019, 4177, 4186, 4490, 4546, 5909, 5910.

Affirmed.

Coal Leases and Permits: Applications

A decision rejecting coal prospecting permit applications will be affirmed where the decision was made pursuant to and in accordance with Secretarial Order 2952 of February 13, 1973.

APPEARANCES: Eugene F. Wiles, Esq., of Delaney, Wiles, Moore, Hayes & Reitman, Inc., Anchorage, Alaska.

OPINION BY MR. FRISHBERG

The appellants named above severally appealed from a decision rejecting their individual coal prospecting permit applications. The decision recited that it was promulgated pursuant to Secretarial Order 2952, which directed that all coal prospecting permit applications must be rejected pending further instructions.

Appellants state that, relying on existing law and regulations, they expended substantial sums in prospecting two prior permit areas which they treated as a unit with those under application on the assumption that permits would issue for the entire area. They argue that Order 2952 reflects a change in policy in excess of the authority of the Secretary and, in effect, is a withdrawal which does not comply with the requirements of the Pickett Act, 43 U.S.C. § 141 (1970). They also assert that the rejection of the permit applications violates the priority rights afforded by the Mineral Leasing Act to the first applicant.

The rejection of an application filed under the Mineral Leasing Act, for reasons relating to the public interest, is entirely within

the discretionary authority of the Secretary. Udall v. Tallman, 380 U.S. 1 (1969); Duesing v. Udall, 350 F.2d 648 (D.C. Cir. 1965), cert. denied, 383 U.S. 912 (1966); Haley v. Seaton, 281 F.2d 620 (D.C. Cir. 1960); Jack E. Griffin, 7 IBLA 155 (1972). Of course, where the land is subject to and available for prospecting, the first filed application will be afforded priority. Udall v. Tallman, supra. However, an application will be rejected where the lands become unavailable for disposition, and the application will not be held in suspense until the lands become available for leasing. M. F. Trask, 4 IBLA 252 (1972); J. G. Hatheway, 68 I.D. 48 (1961); see 43 CFR 2091.1.

All questions raised by appellants were considered prior to the Secretary's Order No. 2952 of February 13, 1973. It was the Secretary's studied opinion that the interests of the United States are best served by the action taken. The Order precludes the issuance of any new coal prospecting permits pending preparation of a program for more orderly development. It directs that all applications for prospecting permits shall be rejected pending further instructions. Pursuant to the Mineral Leasing Act, 30 U.S.C. § 201(b) (1970), the Secretary is authorized to issue such instructions. We have reviewed the decision below to assure those instructions were followed. Marvin E. Weaster, 10 IBLA 277 (1973); Richard K. Todd, 68 I.D. 291 (1961), aff'd in Duesing v. Udall, supra.

In the instant cases BLM correctly applied the instructions of Order 2952 and properly rejected appellants' coal prospecting permit applications.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions below are affirmed.

Newton Frishberg
Chairman

We concur:

Edward W. Stuebing
Member

Joan B. Thompson
Member

